

Adopt Section 30-778 to read:

Post-hearing: Amend Sections 30-778.3, .42, .52, .631, .634(a), .636(c), and .84 to read:

Post-Disapproval: Amend Sections 30-778.1, .62, .631, .633 to read:

30-778 GENERAL EXCEPTION REQUIREMENTS

30-778

- .1 For the purposes of Section 30-778, the following definitions shall apply:
- .11 Applicant provider means an individual who is seeking a general exception to his/her exclusion as a provider due to the Criminal Offender Record Information results as specified in Welfare and Institutions Code section 12305.87(e).
- .12 County means the county IHSS office, or any other organization or agency, such as the county IHSS Public Authority, or Non-Profit Consortium, designated by the county to perform provider enrollment functions.
- .13 Criminal Offender Record Information (CORI) means the criminal offender record information search response, as provided to the county by the California Department of Justice (DOJ).
- .14 Denial notice means the notice provided by a county to an individual informing him/her that he/she is ineligible to serve as a provider as specified in Section 30-776.63.
- .15 Family member means a person who is related to an applicant provider either through blood or marriage.
- .16 General exception means a general exception to the exclusion of an applicant provider granted by the State as specified in Welfare and Institutions Code section 12305.87(e).
- .17 State means the office of the Caregiver Background Check Bureau of the California Department of Social Services.
- .18 Tier 2 or disqualifying crime means any crime specified in Section 30-701(t)(2).
- .19 Tier 2 or disqualifying conviction means any conviction of a crime specified in Section 30-701(t)(2).
- .2 If an applicant provider is denied eligibility to enroll as an IHSS provider due to a conviction of a Tier 2 crime(s), the applicant provider may be enrolled as an

IHSS provider if the applicant provider is granted a general exception by the State.

- .3 An applicant provider should complete all general exception request requirements specified in Section 30-778.5 before submitting the documentation to the State to determine if he/she will be granted a general exception and may be enrolled as an IHSS provider.
- .4 An applicant provider shall be allowed a maximum of 45 calendar days from the date of the denial notice to submit the general exception request and all required documentation specified in Section 30-778.5 to the State.
- .41 The State shall deem an applicant provider who does not submit an IHSS Applicant Provider Request for General Exception to the State within 45 calendar days of the date of the denial notice ineligible to be granted a general exception.
- .42 An applicant provider who submits an IHSS Applicant Provider Request for General Exception to the State within 45 calendar days of the date of the denial notice, but does not submit all required documentation specified in Section 30-778.5, shall be sent an IHSS General Exception Incomplete Request notice stating which required documents are missing. The applicant provider shall be allowed 15 calendar days from the date of the IHSS General Exception Incomplete Request notice to submit the missing documentation to the State.

 - .421 If the missing documentation is not submitted to the State within 15 calendar days of the date of the IHSS General Exception Incomplete Request notice, the State shall proceed with the evaluation process as detailed in Section 30-778.6 et. seq. and provide a determination pursuant to Section 30-778.7.
 - .422 If the general exception evaluation process detailed in Section 30-778.6 et seq. cannot be completed as a result of the missing documentation, the applicant provider's general exception case shall be closed and the applicant provider shall be deemed ineligible to be granted a general exception. The State shall send an IHSS General Exception Case Closure notice to the applicant provider to inform him/her of the general exception case closure. The State shall also send an IHSS General Exception Case Closure notice to the applicable county.
- .5 General Exception Request Requirements

 - .51 An applicant provider seeking a general exception from the State shall submit an IHSS Applicant Provider Request for General Exception to the State. The request must include the applicant provider's name, mailing

address, and telephone number. The request must also include a statement that the individual submitting the request understands he/she was denied eligibility to work as an IHSS provider due to the felony criminal conviction(s) listed on his/her CORI and that he/she is requesting a general exception to become an IHSS provider and work for any IHSS recipient who wishes to hire him/her.

.511 The IHSS Applicant Provider Request for General Exception shall be signed and dated by the applicant provider.

.52 When submitting the general exception request, the applicant provider shall also submit the following documentation:

.521 A copy of the denial notice received from the county IHSS office stating the reason for the applicant provider's ineligibility to be an IHSS provider.

.522 A copy of the IHSS Program Provider Enrollment Form submitted to the county by the applicant provider pursuant to Section 30-776.41.

.523 Documentation (such as a Minute Order, Court-Issued Judgment of Conviction, or letter from the Probation Department) showing that the applicant provider's current or last probation period was informal, if applicable.

.524 A description and verification (such as diplomas or certificates, if available) of any completed training, classes, treatment, counseling, or community service activities that would indicate rehabilitation or changed behavior.

.525 Evidence of an official pardon by the Governor, if applicable.

.526 The applicant provider's employment history for the previous 10 years.

.527 Three signed character reference statements. Only one of the three character reference statements may be written by a family member of the applicant provider. The character reference statements shall be obtained and dated after the date of the applicant provider's denial notice and shall include the following information:

(a) How long the individual has known the applicant provider.

(b) The relationship between the individual and the applicant provider.

- (c) A statement of the individual's opinion of the applicant provider's character.
- (d) A description of any event witnessed by the individual in which the applicant provider interacted with and/or assisted a person who is elderly, blind, or disabled, if applicable.
- (e) Other comments that would help describe the reason the applicant provider wishes to work as an IHSS provider, if applicable.

.528 A signed personal statement by the applicant provider which includes the following information:

- (a) A description of the events surrounding the disqualifying crime(s). The description shall include the events leading up to the disqualifying crime(s), what happened, why it happened, how it happened, and if applicable, who the victim(s) or intended victim(s) was (including, if known, factors such as gender, approximate age, physical characteristics, relationship to applicant provider), and any other relevant information about the disqualifying crime(s).
- (b) A description of any actions taken by the applicant provider subsequent to the disqualifying conviction(s) to ensure he/she will not be involved in any further criminal activity.

.6 Procedures for State Review of General Exception Requests

.61 Upon receipt of a complete general exception request, the State shall request a copy of the CORI from the applicable county.

.611 The county shall deliver a copy of the CORI, as provided to the county by the DOJ, to the State via registered mail and in a manner which protects the confidentiality and privacy of the CORI search response. The CORI shall not be modified or altered from its form or content as provided by the DOJ. The State shall record the date that the CORI is received from the county.

.62 Upon receipt of the CORI from the applicable county, the State shall determine if the applicant provider was correctly excluded based on a conviction for a disqualifying crime pursuant to Welfare and Institutions Code section 12305.87. If it is determined that the applicant provider's exclusion was in error, or if the ten-year exclusionary period lapsed during the processing of the general exception, the general exception request and all accompanying documentation, except for the CORI, shall be

forwarded to the California Department of Social Services with a Forwarding Documents for Evaluation notice.

.63 The State shall consider the following when determining whether to grant a general exception:

.631 The nature and seriousness of the conduct or crime(s) for which the applicant provider was disqualified and its relationship to the duties and responsibilities of an IHSS provider.

- (a) The State shall determine the nature of the disqualifying crime(s) and surrounding circumstances, and whether the crime was violent or non-violent. A crime shall be considered violent if it resulted in physical harm or risk of physical harm to another individual. Because some crimes may appear to be non-violent on their face but may have actually involved the risk of physical harm to others, the State shall review the arrest reports (if available) and the underlying arrest information to make a determination regarding whether the crime(s) was violent. If it is determined that the crime(s) was violent, the State shall evaluate the nature and severity of the violence inflicted during the commission of the crime(s) and the seriousness of the physical harm or risk of physical harm to the victim. This evaluation shall consider whether a weapon was used during the commission of the crime(s) and any provocation that may have led to the criminal act.

 - (1) If an applicant provider submits evidence which clearly and convincingly demonstrates that the disqualifying crime(s) was committed while he or she was a victim of human trafficking and that the disqualifying crime was committed as a direct result of being a victim of human trafficking, this circumstance will be considered strong evidence in favor of granting a general exception.
- (b) The State shall determine if the disqualifying crime(s) involved a sex offense(s) for which a person was required to register under Penal Code section 290(c). The State shall review the arrest reports (if available) and the underlying arrest information to make a determination regarding the severity of the sex offense(s) for which the person was convicted, including the age of the victim, whether physical force or psychological intimidation was used in the commission of the crime, and the level of physical or

emotional trauma suffered by the victim as a result of the crime.

- (c) The State shall identify and evaluate the characteristics of any victim or intended victim of the applicant provider's disqualifying crime(s), noting if the victim or intended victim is part of the population of citizens served by the IHSS program.

.632 The applicant provider's activities since conviction, including, but not limited to, his/her employment, participation in therapy education, or community service that would indicate changed behavior.

.633 The number of convictions and the time that has elapsed since the conviction(s).

- (a) If the applicant provider was disqualified due to a conviction of a sex crime, he/she shall be denied a general exception if he/she has been convicted of more than one disqualifying crime in the previous ten (10) years, except as provided in Section 30-778.633(e). The general exception request shall also be denied unless at least eight (8) years have passed since the applicant provider's completion of his/her most recent period of incarceration, parole, and/or probation for the conviction of the disqualifying sex crime, except as provided in Section 30-778.633(e).

- (b) If the applicant provider was disqualified due to a conviction of a crime involving physical harm or risk of physical harm to another person, he/she shall be denied a general exception if he/she has been convicted of more than one disqualifying crime in the previous ten (10) years, except as provided in Section 30-778.633(e). The general exception shall also be denied unless at least eight (8) years have passed since the applicant provider's completion of his/her most recent period of incarceration, parole, and/or probation for the conviction of the disqualifying crime involving physical harm or risk of physical harm to another person, except as provided in Section 30-778.633(e).

- (c) If the applicant provider was disqualified due to a conviction of a non-violent property crime or fraud, he/she shall be denied a general exception if he/she has been convicted of more than two disqualifying crimes in the previous ten (10) years, except as provided in Section 30-778.633(e). In addition, the general exception shall be denied unless at

least six (6) years have passed since the applicant provider's completion of his/her most recent period of incarceration, parole, and/or probation for the conviction of the disqualifying non-violent property crime or fraud, except as provided in Section 30-778.633(e).

(d) If the applicant provider was disqualified due to a conviction for a crime not specifically addressed in Sections 30-778.633(a), 30-778.633(b), or 30-778.633(c), he/she shall be denied a general exception if he/she has been convicted of more than two (2) disqualifying crimes in the previous ten (10) years, except as provided in Section 30-778.633(e). The general exception shall also be denied unless at least four (4) years have passed since the applicant provider's completion of his/her most recent period of incarceration, parole, or probation for the conviction of the crime not specifically addressed in Sections 30-778.633(a), 30-778.633(b), or 30-778.633(c), except as provided in Section 30-778.633(e).

(e) It is sufficient to rebut any presumed denial of the general exception made pursuant to Sections 30-778.633(a), 30-778.633(b), 30-778.633(c), or 30-778.633(d), if, when evaluated as a whole, documentation and evidence clearly and convincingly demonstrates that the applicant provider no longer poses a risk to the public and/or an IHSS recipient and would be unlikely to engage in further criminal activities. In making this determination, the State shall take into consideration the documentation and evidence provided by the applicant provider in accordance with Sections 30-778.632, 30-778.634, 30-778.635, 30-778.636, 30-778.637, 30-778.638, and 30-778.639 to evaluate whether the applicant provider no longer poses a risk to the public and would be unlikely to engage in further criminal activities.

.634 The applicant provider's criminal history subsequent to the disqualifying crime(s), and whether it indicates a pattern of criminal behavior that may make him/her a risk to the safety and well-being of an IHSS recipient to whom he/she is providing care.

(a) The State shall determine if a pattern of criminal behavior exists that may make the applicant provider a risk to the safety and well-being of an IHSS recipient by reviewing the CORI provided by the county and all arrest or crime reports provided by local law enforcement agencies. A general exception shall be denied if the applicant provider's criminal

history subsequent to the disqualifying crime(s) indicates a pattern of criminal behavior that may make him/her a risk to the safety and well-being of an IHSS recipient to whom he/she is providing care.

(b) If a pattern of criminal behavior exists but the applicant provider presents convincing evidence that subsequent to his/her most recent conviction he/she has been rehabilitated and he/she is not a risk to the safety and well-being of an IHSS recipient placed in his/her care, a general exception may be granted by the State. In making this determination, the State shall identify and consider key factors regarding the applicant provider's likelihood to re-offend. Such factors include, but are not limited to, the applicant provider's age at the time of the crime(s) were committed; whether at the time the crime(s) were committed the applicant provider was under the influence of any substances, such as alcohol and/or drugs, that may have impaired his/her judgment, and if so, whether the applicant provider has participated in any successful treatment programs which have stopped his/her substance abuse.

.635 The extent to which the applicant provider has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the applicant provider.

.636 Any evidence of rehabilitation, including character references, submitted by the applicant provider or by others on his/her behalf.

(a) The personal statement specified in Section 30-778.529 shall be reviewed by the State to determine the appropriate weight to be given to the statement based on its credibility. The State shall determine if the applicant provider's statement is accurate, and if it is not, the State shall attempt to determine if the applicant provider was deliberately untruthful to hide his/her criminal history, or if he/she unintentionally provided misinformation due to having forgotten or misunderstood circumstances or events surrounding the disqualifying crime. If the applicant provider's personal statement contains deliberate falsehoods, the personal statement may be grounds for denial of the general exception request.

(b) The personal statement specified Section 30-778.529 shall be reviewed by the State to determine if it is:

- (1) An honest evaluation of the circumstances and behavior that led to the applicant provider's conviction(s).
 - (2) An accurate account of the applicant provider's criminal history.
 - (3) An accurate account of the circumstances surrounding the applicant provider's commission of the disqualifying crime(s) that is supported by the arresting officer's report and other official reports of the criminal incident(s).
 - (4) An acceptance of responsibility by the applicant provider and display of genuine remorse for the commission of the disqualifying crime(s).
- (c) If the applicant provider fails to provide any or all of the three character reference letters specified in Section 30-778.528, it may result in a denial of the general exception request if the applicant provider does not otherwise demonstrate that he/she has been rehabilitated. If the applicant provider provides more than three character reference letters, the State shall read and evaluate all of the character reference letters submitted.
- (d) Documentation submitted by the applicant provider to show rehabilitation shall be evaluated by the State to determine if:
- (1) The applicant provider has pursued any educational goals and if he/she has been consistent in the pursuit of such goals.
 - (2) The applicant provider performed any mandatory or voluntary community service, and if he/she was required to provide any sort of restitution to the victims of the disqualifying crime(s), the status of that restitution.
 - (3) The applicant provider participated in or completed any mandatory or voluntary therapeutic counseling, including, but not limited to, psychological therapy, substance abuse counseling, domestic violence counseling, and/or anger management therapy.
- .637 The applicant provider's employment history and current and/or former employer recommendations. Additional consideration will

be given to employer recommendation(s) from individuals who have received or have indicated a desire to receive personal care services from the applicant provider. The documentation should indicate if the applicant provider has been consistently employed since release from incarceration and/or if he/she has maintained good employment habits.

.638 Circumstances surrounding the disqualifying crime(s) that may indicate it is unlikely that the applicant provider would repeat such an offense.

.639 Whether a full and unconditional pardon has been granted by the Governor to the applicant provider for the conviction(s) for which he/she was denied eligibility.

.7 After considering the documentation submitted by an applicant provider as specified in this section, the State shall either grant or deny a general exception request.

.71 If the State grants a general exception, the State shall send a General Exception Approval notice to the applicant provider informing him/her of the decision. The State shall also send a County General Exception Approval notice to the county in which the applicant provider was denied eligibility due to the Tier 2 conviction, informing the county office of the State's decision to grant the general exception.

.711 If an applicant provider is granted a general exception, he/she may be enrolled as an IHSS provider and receive payment for providing services for a recipient(s) upon his/her completion of the enrollment requirements specified in Section 30-776.

.712 An individual enrolled as an IHSS provider after being granted a general exception by the State shall remain subject to exclusionary rules for all disqualifying convictions which occur subsequent to the granting of the individual's general exception.

.72 If the State denies a general exception request, the State shall provide a General Exception Denial notice to the applicant provider informing him/her of the decision. The General Exception Denial notice shall be provided to the applicant provider via personal service or registered mail. The State shall also provide a County General Exception Denial notice to the county in which the applicant provider was denied eligibility due to the Tier 2 conviction. The General Exception Denial notice shall include the following:

.721 A statement of the State's reasons for the denial of the general exception that evaluates evidence of rehabilitation submitted by the

applicant provider and specifically addresses the evidence submitted and considered by the State pursuant to this section.

.722 An explanation of the applicant provider's right to an administrative hearing to contest the State's denial of a general exception, as specified in Section 30-778.8.

.723 A copy of the applicant provider's CORI, even if the applicant provider previously received a copy of the CORI from another source. The CORI shall be provided in a manner that protects the confidentiality and privacy of the CORI. The CORI shall not be modified or altered from its form or content as provided by the DOJ. The State shall record the date that the CORI was provided to the applicant provider.

.73 For all general exception requests, regardless of outcome, the State shall retain copies of the General Exception Request, the applicant provider's CORI, and a dated copy of the General Exception Approval notice or General Exception Denial notice that was sent to the applicant provider with all enclosures. The State shall not make the CORI available to any individual other than the applicant provider. The documents shall be retained by the State until the date the disqualifying conviction(s) are no longer within the 10 year exclusionary period.

.8 General Exception Denial Appeal Process and Procedures

.81 If an applicant provider's general exception request is denied by the State, he/she may appeal the denial by requesting an administrative hearing in writing. To request an administrative hearing, an applicant provider shall submit a written administrative hearing request to the State with a copy of the General Exception Denial notice within fifteen (15) business days of the applicant provider's receipt of the General Exception Denial notice.

.82 Upon receipt of a written request for an administrative hearing, the State shall date-stamp the request with the date it was received by the State. The State shall send the applicant provider a General Exception Acknowledgement of Appeal notice within five (5) business days of the State's receipt of the request.

.83 The hearing shall be conducted consistent with the procedures specified in California Health and Safety Code section 100171 and shall be conducted by a hearing officer or administrative law judge designated by the director.

.84 The State shall send a copy of the final administrative hearing decision to the applicant provider by certified mail, and another copy the county in

which the applicant provider initially applied to serve as a provider, within fifteen (15) calendar days after the adoption date of the decision.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Section 12305.87, Welfare and Institutions Code.